



GENERAL ASSEMBLY

COMMONWEALTH OF KENTUCKY

2006 REGULAR SESSION

SENATE BILL NO. 136

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TREY GRAYSON
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY R. Adler

AN ACT relating to surface coal mining.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

1 Section 1. KRS 350.060 is amended to read as follows:

2 (1) (a) No person shall engage in surface coal mining and reclamation operations
3 without having first obtained from the cabinet a permit designating the area of
4 land affected by the operation. Permits shall authorize the permittee to engage
5 in surface coal mining and reclamation operations upon the area of land
6 described in his application for a period not to exceed five (5) years. However,
7 if an applicant demonstrates that a specified longer term is reasonably needed
8 to obtain necessary financing for equipment and the opening of the operation
9 and if the application is full and complete for the specified longer term, the
10 cabinet may grant a permit for the longer term. No mining shall be permitted
11 beyond the time period obligations of the initial or extended bond coverage.

12 (b) Subject to the provisions of KRS 350.010(1) and (2), no person shall
13 knowingly and willfully receive, transport, sell, convey, transfer, trade,
14 exchange, donate, purchase, deliver, or in any way derive benefit from coal
15 removed from any surface mining operation which does not have a permit as
16 required under this section.

17 (2) No permit or revision application shall be approved unless the application
18 affirmatively demonstrates, and the cabinet finds in writing on the basis of the
19 information set forth in the application or from information otherwise available, that
20 the permit application is accurate and complete and that all the requirements of this
21 chapter have been complied with.

22 (3) A person desiring a permit to engage in surface coal mining operations shall file an
23 application which shall state:

24 (a) The location and area of land to be affected by the operation, with a
25 description of access to the area from the nearest public highways;

- 1 (b) The owner or owners of the surface of the area of land to be affected by the
2 permit and the owner or owners of all surface area adjacent to any part of the
3 affected area;
- 4 (c) The owner or owners of the coal to be mined;
- 5 (d) The source of the applicant's legal right to mine the coal on the land affected
6 by the permit;
- 7 (e) The permanent and temporary post office addresses of the applicant, which
8 shall be updated immediately if changed at any point prior to final bond
9 release;
- 10 (f) Whether the applicant or any person, partnership, or corporation associated
11 with the applicant holds or has held any other permits under this chapter, and
12 an identification of the permits;
- 13 (g) The names and addresses of every officer, partner, director, or person
14 performing a function similar to a director of the applicant, together with the
15 names and addresses of any individual owning of record ten percent (10%) or
16 more of any class of voting stock of the applicant, and whether the applicant
17 or any person is subject to any of the provisions of subsection (3) of KRS
18 350.130 and he shall so certify. The permittee shall submit updates of this
19 information as changes occur or as otherwise provided by administrative
20 regulation; however, failure to submit updated information shall constitute a
21 violation of this chapter only upon the permittee's refusal or failure to timely
22 submit the information to the cabinet upon request. Upon receipt of updated
23 information satisfactory to the cabinet, the cabinet shall promptly update its
24 computer system containing the information;
- 25 (h) A listing of any violations of this chapter, Public Law 95-87, and any law,
26 rule, or regulation in effect for the protection of air or water resources incurred
27 by the applicant in connection with any surface coal mining and reclamation

1 operation during the three (3) year period prior to the date of an application.

2 The list shall indicate the final resolution of the violations; and

3 (i) Whether the area of land to be affected by the operation has been previously
4 mined and is in compliance with current reclamation standards, and, if not,
5 identify the needed reclamation work.

6 (4) The application for a permit shall be accompanied by an official document, and an
7 affidavit attesting to the document's authenticity, which will evidence what
8 particular business entity the applicant is, whether a foreign or domestic
9 corporation, a partnership, an entity doing business as another, or, if sole
10 proprietorship, an affidavit so stating.

11 (5) The application for a permit shall be accompanied by copies, in numbers
12 satisfactory to the cabinet, of a United States Geological Survey topographic map or
13 other map acceptable to the cabinet on which the applicant has indicated the
14 location of the operation, the course which would be taken by drainage from the
15 operation to the stream or streams to which the drainage would normally flow, the
16 name of the applicant and date, and the name of the person who located the
17 operation on the map.

18 (6) The application for a permit shall be accompanied by copies, in numbers
19 satisfactory to the cabinet, of an enlarged United States Geological Survey
20 topographic map or other map acceptable to the cabinet meeting the requirements of
21 paragraphs (a) to (i) of this subsection. The map shall:

22 (a) Be prepared and certified by a professional engineer registered under the
23 provisions of KRS Chapter 322. The certification shall be in the form as
24 provided in subsection (8) of this section, except that the engineer shall not be
25 required to certify the true ownership of property under paragraph (d) of this
26 subsection;

27 (b) Identify the area to correspond with the application;

- 1 (c) Show adjacent deep mining;
 - 2 (d) Show the boundaries of surface properties and names of owners of the
 - 3 affected area and adjacent to any part of the affected area;
 - 4 (e) Be of a scale of 1:24,000 or larger;
 - 5 (f) Show the names and locations of all streams, creeks, or other bodies of public
 - 6 water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the
 - 7 area of land affected and within five hundred (500) feet of the area;
 - 8 (g) Show by appropriate markings the boundaries of the area of land affected, the
 - 9 cropline of the seam or deposit of coal to be mined, and the total number of
 - 10 acres involved in the area of land affected;
 - 11 (h) Show the date on which the map was prepared, the north point, and the
 - 12 quadrangle name; and
 - 13 (i) Show the drainage plan on and away from the area of land affected. The plan
 - 14 shall indicate the directional flow of water, constructed drainways, natural
 - 15 waterways used for drainage, and the streams or tributaries receiving the
 - 16 discharge.
- 17 (7) Each application shall include a determination of the probable hydrologic
- 18 consequences of the mining and reclamation operations, both on and off the mine
- 19 site, with respect to the hydrologic regime, quantity and quality of water in surface
- 20 and groundwater systems, including the dissolved and suspended solids under
- 21 seasonal flow conditions, and the collection of sufficient data for the mine site and
- 22 surrounding areas so that an assessment can be made by the cabinet of the probable
- 23 cumulative impacts of all anticipated mining in the area upon the hydrology of the
- 24 area and particularly upon water availability. This determination shall not be
- 25 required until the time hydrologic information on the general area prior to mining is
- 26 made available from an appropriate federal or state agency. The permit shall not be
- 27 approved until the information is available and is incorporated into the application.

- 1 (8) All certifications required by this chapter to be made by professional engineers shall
2 be done in the form prescribed by the cabinet and shall be reasonably specific as to
3 the work being certified. The cabinet may reject any document or map as
4 incomplete if it is not properly certified.
- 5 (9) In addition to the information and maps required above, each application for a
6 permit shall be accompanied by detailed plans or proposals showing the method of
7 operation; the manner, time, and distance for backfilling; grading work; and a
8 reclamation plan for the affected area, which proposals shall meet the requirements
9 of this chapter and administrative regulations adopted pursuant thereto.
- 10 (10) The application for a permit shall be accompanied by proof that the applicant has
11 public liability insurance coverage satisfactory to the cabinet for the surface mining
12 and reclamation operations for which the permit is sought, or proof that the
13 applicant has satisfied self-insurance requirements as provided by administrative
14 regulations of the cabinet. The coverage shall be maintained in full force and effect
15 during the terms of the permit and any permit renewal, and until reclamation
16 operations are completed.
- 17 (11) A basic fee set by administrative regulation, and bearing a reasonable relationship to
18 the cost of processing the permit application but not to exceed three hundred
19 seventy-five dollars (\$375), plus a fee set by administrative regulation but not to
20 exceed seventy-five dollars (\$75), for each acre or fraction thereof of the area of
21 land to be affected by the operation, shall be paid before the permit required in this
22 section shall be issued; provided that if the cabinet approves an incremental bonding
23 plan submitted by the applicant, the acreage fees may be paid in increments and at
24 times corresponding to the approved plan. The applicant shall file with the cabinet a
25 bond payable to the Commonwealth of Kentucky with surety satisfactory to the
26 cabinet in the sum to be determined by the cabinet for each acre or fraction thereof
27 of the area of land affected, with a minimum bond of ten thousand dollars

(\$10,000), conditioned upon the faithful performance of the requirements set forth in this chapter and of the administrative regulations of the cabinet. The cabinet shall forfeit the entire amount of the bond for the permit area or increment in the event of forfeiture. In determining the amount of the bond, the cabinet shall take into consideration the character and nature of the overburden; the future suitable use of the land involved; the cost of backfilling, grading, and reclamation to be required; and the probable difficulty of reclamation, giving consideration to such factors as topography, geology, hydrology, and revegetation potential. The bond amount shall initially be computed to be sufficient to assure completion of reclamation if the work had to be performed by the cabinet in the event of forfeiture. The cabinet shall promulgate administrative regulations setting forth bonding requirements including, but not limited to, requirements for the amount, duration, release, and forfeiture of bonds.

~~(12) [Surface coal mining and reclamation operations which affected two (2) acres or less, as defined by administrative regulations of the cabinet, which were conducted pursuant to two (2) acre or less permits issued by the cabinet, which were commenced on or before June 5, 1987, and on which mining ceased on or before November 7, 1987, shall be exempt from the requirements of this chapter, except as follows. Reclamation of the operations shall be accomplished in accordance with administrative regulations promulgated by the cabinet for operations of two (2) acres or less. The cabinet shall not require that the highwalls left by the operations be eliminated. Bond shall be maintained until reclamation is successfully completed. All procedural provisions and the penalty provisions of KRS 350.990 shall apply to operations conducted pursuant to this subsection. The cabinet shall enforce this subsection consistent with this chapter, except that the cabinet shall not issue orders requiring cessation of operations for mere failure to abate a violation.~~

~~(13)]~~ The cabinet shall promulgate administrative regulations for the permitting of

1 operations with surface effects of underground mining and other surface coal
 2 mining and reclamation operations consistent with this section. The cabinet shall
 3 recognize the distinct differences between the surface effects of underground
 4 mining and strip mining, as also provided in KRS 350.151, in promulgating
 5 permitting requirements for these operations; provided, that the cabinet shall require
 6 that all the areas overlying underground workings be permitted but that the areas
 7 overlying underground workings not affected by operations and facilities occurring
 8 on the surface shall not be subject to the payment of acreage fees or bond
 9 requirements of subsection (11) of this section, KRS 350.070, or KRS 350.151.

10 ~~(13)~~~~(14)~~ Any valid permit issued pursuant to this chapter shall carry with it the right of
 11 successive renewal upon expiration with respect to areas within the boundaries of
 12 the existing permit. An applicant for renewal of a permit shall pay a basic fee set by
 13 regulation, not to exceed three hundred seventy-five dollars (\$375). The holders of
 14 the permit may apply for renewal and the renewal shall be issued, provided that on
 15 application for renewal the burden shall be on the opponents of renewal, subsequent
 16 to the fulfillment of the public notice requirements of this chapter, unless it is
 17 established and written findings by the cabinet are made that:

- 18 (a) The terms and conditions of the existing permit are not being satisfactorily
 19 met;
- 20 (b) The present surface coal mining and reclamation operation is not in
 21 compliance with the environmental protection standards of this chapter;
- 22 (c) The renewal requested substantially jeopardizes the applicant's continuing
 23 responsibility on existing permit areas;
- 24 (d) The applicant has not provided evidence that the performance bond in effect
 25 for the operation will continue in full force and effect for any renewal
 26 requested in the application as well as any additional bond the cabinet might
 27 require; or

1 (e) Any additional revised or updated information required by the cabinet has not
2 been provided.

3 Prior to the approval of any renewal of permit, the cabinet shall provide notice to
4 the appropriate public authorities.

5 ~~(14)~~~~(15)~~ If an application for renewal of a valid permit includes a proposal to extend
6 the mining operation beyond the boundaries authorized in the existing permit, the
7 portion of the application for renewal of a valid permit which addresses any new
8 areas of surface disturbance shall be subject to the full standards applicable to new
9 applications under this chapter.

10 ~~(15)~~~~(16)~~ Any permit renewal shall be for a term not to exceed the period of the original
11 permit. Application for permit renewal shall be made at least one hundred twenty
12 (120) days prior to the expiration of the valid permit.~~[However, if a permit has~~
13 ~~expired or if a permit renewal application has not been timely filed, and the operator~~
14 ~~or permittee desires to continue the surface coal mining operation, the cabinet shall~~
15 ~~forthwith cause a notice of noncompliance to be issued. The notice of~~
16 ~~noncompliance shall be deemed to have been complied with, and the permit may be~~
17 ~~renewed, if the cabinet receives a permit renewal application within thirty (30) days~~
18 ~~of the receipt of the notice of noncompliance. Upon the submittal of a permit~~
19 ~~renewal application, the operator or permittee shall be deemed to have timely filed~~
20 ~~the permit renewal application and shall be entitled to continue, under the terms of~~
21 ~~the expired permit, the surface coal mining operation, pending the issuance of the~~
22 ~~permit renewal. Failure to comply with the remedial measures of the notice of~~
23 ~~noncompliance shall result in the cessation of the surface coal mining operation.]~~

24 ~~(16)~~~~(17)~~ Notwithstanding any of the provisions of this section, a permit shall terminate
25 if the permittee has not commenced the surface coal mining operations covered by
26 the permit within three (3) years of the issuance of the permit. However, the cabinet
27 may grant reasonable extensions of time upon a showing that the extensions are

1 necessary by reason of litigation precluding commencement of operations, or
2 threatening substantial economic loss to the permittee, or by reason of conditions
3 beyond the control and without the fault or negligence of the permittee. With
4 respect to coal to be mined for use in a synthetic fuel facility or specific major
5 electric generating facility, the permittee shall be deemed to have commenced
6 surface mining operations at the time the construction of the synthetic fuel or
7 generating facility is initiated.

8 ~~(17)~~~~((18))~~ Each application for a permit or revision for auger mining on a previously
9 mined area shall contain information to describe the area to be affected, to show
10 that the proposed method of operation will result in stable post-mining conditions,
11 and reduce or eliminate adverse environmental conditions created by previous
12 mining activities. If the cabinet determines that the affected area cannot be
13 stabilized and reclaimed subsequent to augering or that the operation will result in
14 an adverse impact to the proposed or adjacent area, the permit or revision shall not
15 be issued. The cabinet shall, consistent with all applicable requirements of this
16 chapter, issue a permit or revision if the applicant demonstrates that the proposed
17 coal mining operations will provide for reduction or elimination of the highwall, or
18 reduction or abatement of adverse impacts resulting from past mining activities, or
19 stabilization or enhancement of a previously mined area. The cabinet shall insure
20 that all reasonably available spoil material will be used to backfill the highwall to
21 the extent practical and feasible; provided, however, that in all cases the holes be
22 properly sealed and backfilled to a minimum of four (4) feet above the coal seam
23 being mined.

24 ~~(18)~~~~((19))~~ All operations involving the loading of coal which do not separate the coal
25 from its impurities, and which are not located at or near the mine site, shall be
26 exempt from the requirements of this chapter.

27 Section 2. KRS 350.075 is amended to read as follows:

1 (1) In order to bring about a more desirable land use or promote the public interest and
 2 the environment, the cabinet may, at its discretion, issue special permits for the
 3 remining of previously affected areas, including but not limited to, secondary coal
 4 recovery operations, such as coal extraction from coal refuse piles and coal recovery
 5 from slurry ponds. Such permits may provide for alternate requirements for
 6 revegetation, topsoil, bonding, premining data collection requirements, water
 7 quality requirements where there are pre-existing pollutional discharges resulting
 8 from previous mining, and other provisions which may encourage remining and
 9 secondary coal recovery.

10 (2) The cabinet is hereby authorized to promulgate administrative regulations as
 11 necessary in order to implement the provisions of this section.

12 ~~[(3) The cabinet shall, on or before August 1, 1986, submit to the Federal Office of~~
 13 ~~Surface Mining proposed regulations to amend the state program to provide for~~
 14 ~~such permits.]~~

15 Section 3. KRS 350.090 is amended to read as follows:

16 (1) Under the provisions of this chapter and administrative regulations adopted by the
 17 cabinet, a permittee shall prepare and the permittee or operator shall carry out a
 18 method of operation, plan of grading and backfilling, and a reclamation plan for the
 19 area of land affected by his operation. In developing a method of operation, and the
 20 plans of backfilling, grading, and reclamation, all measures shall be taken to
 21 eliminate damages to members of the public, their real and personal property, public
 22 roads, streams, and all other public property from soil erosion, rolling stones and
 23 overburden, water pollution, and hazards dangerous to life and property. The permit
 24 application containing the required plans and other information as required shall be
 25 submitted to the cabinet and~~[, except for applications or renewals submitted in~~
 26 ~~compliance with KRS 350.060(2),]~~ the cabinet shall notify the applicant by certified
 27 mail, return receipt requested, within sixty-five (65) cumulative working days after

1 receipt of a complete application whether it is acceptable. If applicable notice,
 2 hearing, and conference procedures prevent a decision from being issued within the
 3 sixty-five (65) cumulative working day period, the cabinet shall have additional
 4 reasonable time to issue its decision, not to exceed twenty (20) days from the
 5 completion of the notice, hearing, and conference procedures. If the permit
 6 application is not acceptable, the cabinet shall set forth the reasons for which the
 7 application or plans are not acceptable and it may propose modifications, delete
 8 areas, or reject the entire application. If the applicant disagrees with the decision of
 9 the cabinet, he may, by written notice, request a hearing conducted by the cabinet in
 10 the manner provided by KRS 350.0305. The cabinet shall notify the applicant by
 11 certified mail, return receipt requested, within twenty (20) days after the hearing of
 12 its decision. Any person aggrieved by a final order of the cabinet may appeal
 13 through the courts as set forth in KRS 350.0305.

14 (2) If the permittee desires to seek funds from the reclamation development fund to
 15 develop an economic development unit during reclamation, the permittee shall
 16 submit, along with the reclamation plan, a reclamation development plan outlining
 17 the reclamation development project and showing how it will conform with the
 18 reclamation standards of this chapter.

19 (3) No permittee, operator, or person shall throw, dump, pile, or permit the dumping,
 20 piling, or throwing, or otherwise placing any overburden, stones, rocks, coal,
 21 particles of coal, earth, soil, dirt, debris, trees, wood, logs, or any other materials or
 22 substances of any kind or nature beyond or outside of the area of land which is
 23 under permit and for which bond has been posted under KRS 350.060 or place these
 24 materials in such a way that normal erosion or slides brought about by natural
 25 physical causes will permit the materials to go beyond or outside of the area of land
 26 which is under permit and for which bond has been posted under KRS 350.060.

27 Section 4. KRS 350.093 is amended to read as follows:

- 1 (1) As determined by administrative regulations of the cabinet, time and distance limits
2 shall be established requiring backfilling, grading, and planting to be kept current,
3 so that all reclamation efforts proceed in an environmentally sound manner and as
4 contemporaneously as practicable under regulations promulgated by the cabinet. All
5 backfilling and grading shall be completed before necessary equipment is moved
6 from the operation; except that the cabinet may for good cause approve the moving
7 of equipment before all backfilling and grading is completed.
- 8 (2) (a) The cabinet may allow a permittee to defer the time criteria of
9 contemporaneous reclamation requirements on specified areas if the permittee
10 can demonstrate that the deferment is necessary to address at least one (1) of
11 the following:
- 12 1. Adverse condition including weather, labor, and other conditions clearly
13 beyond the permittee's control;
 - 14 2. Other bona fide mining operations carried out on a strip mined area,
15 pursuant to KRS 350.080; or
 - 16 3. Coal marketing problems.
- 17 (b) Application for a deferment pursuant to this section shall be in the form
18 prescribed by the cabinet. The applicant shall have the burden of establishing
19 the need for the deferment. The applicant for the deferment shall demonstrate
20 that reclamation on the site is contemporaneous as of the date of the request
21 for deferment and that distance requirements for contemporaneous
22 reclamation will be met during the period of the deferment. Approval of the
23 deferment request shall be made in writing. The approval shall state that the
24 deferment is justified and that no environmental damage will occur during the
25 period of deferment. Reclamation deferments may be approved for a period
26 reasonably related to the specified conditions justifying the deferment, but the
27 aggregate deferral period shall not exceed thirty (30) months. The deferral

1 shall not extend beyond the expiration date of the permit. The cabinet shall
2 periodically reexamine and update the amount of the bond on the permit area
3 so that the amount of the bond is sufficient to assure completion of
4 reclamation if the work had to be performed by the cabinet in the event of
5 forfeiture.

6 (3) If the permittee or operator desires to conduct drift mining or other underground
7 mining upon the premises or use the openings for haulageways or other lawful
8 purposes, the permittee or operator may designate locations to be used for purposes
9 at which places it will not be necessary to backfill until the drift or other
10 underground mining or other use is completed, during which time the bond on file
11 for that portion of the operation shall not be released. That portion of the locations
12 shall be described and designated on the map attached thereto. If the permittee or
13 operator wishes to combine surface operations with underground mining operations
14 to assure maximum practical recovery of coal resources, the cabinet may grant a
15 variance, pursuant to regulations promulgated by the cabinet, for specific areas
16 within the reclamation plan from the requirement that reclamation efforts proceed
17 pursuant to subsection (1) of this section so as to permit underground mining
18 operations prior to reclamation.

19 (4) The cabinet may release in whole or in part the reclamation bond or deposit for a
20 particular operation if the cabinet is satisfied that the reclamation covered by the
21 bond or deposit or portion thereof has been accomplished as required by this
22 chapter. These bond releases shall be made in accordance with the following
23 schedule:

24 (a) When the permittee completes the backfilling, regrading, and drainage control
25 of a bonded area in accordance with his approved reclamation plan, the release
26 of sixty percent (60%) of the bond or collateral for the applicable permit area.

27 (b) After revegetation has been established on the regraded mined lands in

1 accordance with the approved reclamation plan, additional bond or collateral
2 for the applicable permit shall be released. When determining the amount of
3 bond to be released after successful revegetation has been established, the
4 cabinet shall retain that amount of the bond for the revegetated area which
5 would be sufficient for a third party to cover the cost of reestablishing
6 revegetation; this amount shall be retained for the period specified for
7 permittee responsibility for reestablishing revegetation. No part of the bond or
8 deposit shall be released under this subsection as long as the lands to which
9 the release would be applicable are contributing suspended solids to
10 streamflow or runoff outside the permit area in excess of requirements set by
11 this chapter or until soil productivity for prime farm lands has returned to
12 levels of yield equivalent to those of unmined land of the same soil type in the
13 surrounding area under equivalent management practices as determined from
14 soil surveys that may be required to be included in the permit application. If a
15 sedimentation pond is to be retained as a permanent impoundment, the portion
16 of bond may be released under this subsection so long as provisions for sound
17 future maintenance by the permittee or the landowner have been made with
18 the cabinet.

19 (c) When the permittee has completed successfully all surface coal mining and
20 reclamation activities, the release of the remaining portion of the bond, or
21 collateral, but not before the expiration of the period specified for permittee
22 responsibility. No bond shall be fully released until all reclamation
23 requirements of this chapter are fully met.

24 (5) Upon satisfying the requirements of subsections (4)(a), (b), or (c) of this section, the
25 permittee may file, or the cabinet shall initiate, an application for total or partial
26 bond release.

27 (a) A permittee shall have the right to begin public advertisement of its request

1 for bond release at the time it files its request for the release. The cabinet may
2 undertake, at permittee expense, public advertisement of any cabinet initiated
3 bond release. If the cabinet initiates a bond release pursuant to this subsection
4 but chooses not to advertise the release pursuant to this section, and the
5 permittee does not advertise the request for the release within the time
6 schedules established by this subsection, the bond release application shall be
7 denied. All public advertisements of bond release applications, whether
8 authorized by the permittee or the cabinet, shall begin within sixty (60) days
9 after either the filing of a bond release request by the permittee or the
10 initiation of a bond release by the cabinet. Public advertisement shall occur at
11 least once a week for four (4) successive weeks in a newspaper of general
12 circulation in the locality of the surface coal mining operation.

13 (b) The public advertisement required by this subsection shall include: the permit
14 number and permit approval date, notification of the precise location of the
15 land affected, the number of acres, the type and amount of the bond filed and
16 the portion sought to be released, the type and appropriate dates of
17 reclamation work performed, a description of the results achieved as they
18 relate to the operator's approved reclamation plan, and the name and address
19 of the cabinet to which written comments, objections, or requests for public
20 hearings and informal conferences on the specific bond release may be
21 submitted. Proof of advertisement shall be placed with the bond release
22 application within thirty (30) days after the advertisement.

23 (c) Within thirty (30) days of filing of any bond release request, the permittee
24 shall submit copies of letters which it has sent to adjoining property owners,
25 local governmental bodies, planning agencies, sewage and water treatment
26 authorities, and water companies in the locality in which the surface coal
27 mining and reclamation operation took place, notifying them of the intention

1 to seek release from the bond. For bond releases initiated by the cabinet, the
2 cabinet shall undertake the notification requirements set forth in this
3 subsection.

4 (d) Upon the filing of an application for bond release by a permittee, or the
5 initiation of the release by the cabinet, the cabinet shall notify, within thirty
6 (30) days of the filing or initiation, the municipality where the surface coal
7 mining operation is located, pursuant to regulations promulgated by the
8 cabinet.

9 (6) Upon the filing of any partial or total bond release request by a permittee, the
10 cabinet shall within thirty (30) days conduct an inspection and evaluation of the
11 reclamation work involved. The evaluation shall consider, among other things, the
12 degree of difficulty to complete any remaining reclamation, whether pollution of
13 surface or subsurface water is occurring, the probability of continuance of future
14 occurrence of the pollution, and the estimated cost of abating the pollution.

15 (7) The cabinet shall notify the permittee in writing of its decision to release or not to
16 release all or part of the performance bond or deposit within five (5) days following
17 receipt of proof of public advertisement as required in subsection (5)(b), or the end
18 of the thirty (30) day public comment period, whichever is later, if no public hearing
19 is held pursuant to subsection (10) of this section; and if there has been a public
20 hearing held pursuant to subsection (10) of this section, within thirty (30) days
21 thereafter.

22 (8) If the cabinet disapproves the application for release of the bond or portion thereof,
23 the cabinet shall notify the permittee, in writing, stating the reasons for disapproval
24 and recommending corrective actions necessary to serve the release and allowing
25 opportunity for a public hearing. The cabinet shall not disapprove an application for
26 release of a surety bond or a bond secured by a letter of credit as provided for under
27 subsection (4)(a) or (b) of this section or under the partial release provisions

1 applicable to an interim permit, or take any action to forfeit the surety bond, or bond
 2 secured by letter of credit, solely upon the permittee's failure to pay penalties or
 3 fines, if applicable reclamation requirements for the requested release have been
 4 fully met. The cabinet shall not continue to hold under the interim or permanent
 5 program remaining surety bond proceeds or the remaining bond secured by a letter
 6 of credit where a forfeiture has occurred solely as a result of a failure to pay
 7 penalties or fines, if the reclamation requirements of this chapter have been fully
 8 met.

9 (9) The bond liability of the permittee shall include only those actions which the
 10 permittee is obliged to take under the permit, including completion of the
 11 reclamation plan.~~[Actions of third parties which are beyond the control and~~
 12 ~~influence of the permittee and for which the permittee is not responsible under the~~
 13 ~~permit shall not be covered by the bond.]~~

14 (10) Any person having a valid legal interest which might be adversely affected by
 15 release of the bond, and the responsible officer or head of any governmental agency
 16 so designated by cabinet regulations, shall have the right to file written objections to
 17 the proposed bond release with the cabinet, and to request a hearing in accordance
 18 with procedural regulations promulgated by the cabinet.

19 Section 5. KRS 350.445 is amended to read as follows:

20 The following performance standards shall be applicable to steep-slope strip mining and
 21 shall be in addition to those general performance standards required by KRS 350.405 to
 22 350.435; provided, however, that the provisions of this section shall not apply to those
 23 situations in which a permittee or operator is mining on flat or gently rolling terrain, on
 24 which an occasional steep slope is encountered through which the mining operation is to
 25 proceed, leaving a plain or predominantly flat area, or where a permittee or operator is in
 26 compliance with the provisions of KRS 350.450(2):

27 (1) The permittee or operator shall insure that when performing strip mining on steep

1 slopes, debris, abandoned or disabled equipment, spoil material, or waste mineral
2 matter not be placed on the downslope below the bench or mining cut; provided,
3 that spoil material in excess of that required for the reconstruction of the
4 approximate original contour under the provisions of KRS 350.410 or 350.445(2)
5 shall be permanently stored pursuant to KRS 350.440.

6 (2) The permittee or operator shall complete backfilling with spoil material and shall be
7 required to cover completely the highwall and return the site to the approximate
8 original contour, which material will maintain stability following mining and
9 reclamation.

10 (3) The permittee or operator may not disturb land above the top of the highwall unless
11 the cabinet finds that the disturbance will facilitate compliance with the
12 environmental protection standards of this subsection; provided, however, that the
13 land disturbed above the highwall shall be limited to that amount necessary to
14 facilitate compliance. The land above the highwall may be disturbed for
15 construction of a permanent road only where the applicant affirmatively
16 demonstrates, and the cabinet makes a detailed and written determination, that the
17 proposed disturbance facilitates compliance with this chapter and provided that the
18 land disturbed shall be limited to that amount necessary to facilitate such
19 compliance. The cabinet shall make this determination upon a demonstration by the
20 permittee that:

21 (a) The permittee will completely eliminate the production highwall and backfill
22 the mined areas to approximate original contour with no road remaining on
23 the bench;

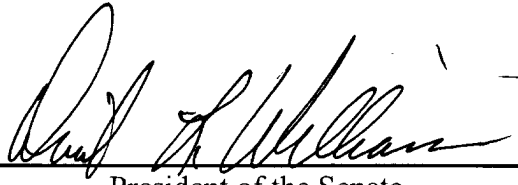
24 (b) The road will be placed on a solid base rather than on fill material and
25 drainage will be diverted from the mining area;

26 (c) The road will comply with all applicable design criteria, including a drainage
27 plan for avoiding seepage or uncontrolled discharge of water into the

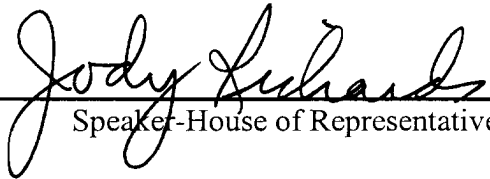
- 1 backfilled areas;
- 2 (d) The spoil calculations and spoil disposal plans include the road cut material
3 and the extent, if any, that road cut material will be used to eliminate a
4 production highwall;
- 5 (e) The road will connect to another road or roads and is necessary in order to
6 support the approved postmining land uses;
- 7 (f) Where practical and feasible, an undisturbed barrier will be left between the
8 production highwall and the road itself. When an undisturbed barrier is not
9 feasible, witness monuments will be left at a minimum of two (2) locations
10 above the production highwall;
- 11 (g) The road will be constructed to a size and design appropriate to ~~support coal~~
12 ~~mining activities and~~ the proposed post-mining land use;
- 13 (h) The proposed mine plan and sequencing of the road construction in relation to
14 the mining activity will minimize placement of spoil material into valley or
15 hollow fills and will maximize permanent retention of mined spoil on the
16 mine bench;
- 17 (i) There will be no coal removal from the construction of the permanent road
18 except for incidental nonmerchantable coal that is disposed of in an approved
19 manner; and
- 20 (j) All other performance standards of the chapter are met.
- 21 (4) For the purposes of this section, the term "steep slope" is any slope above twenty
22 (20) degrees or such lesser slope as may be defined by the cabinet, by regulation,
23 after consideration of soil, climate, and other characteristics of the region.

24 Section 6. The following KRS section is repealed:

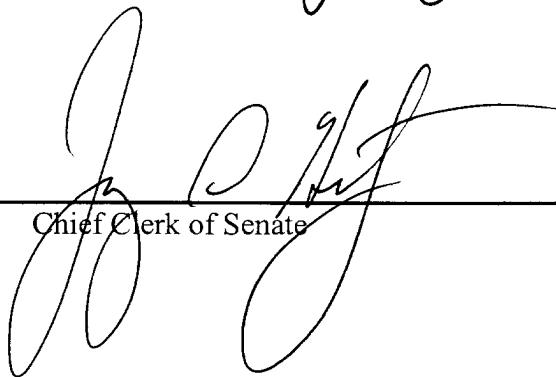
25 350.285 Removal of coal on private land -- Implementation of section.



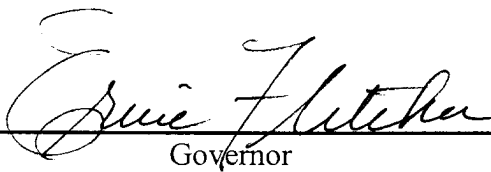
President of the Senate



Speaker-House of Representatives

Attest: 

Chief Clerk of Senate

Approved 

Governor

Date 